

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

USCOC of New Hampshire RSA #2, Inc.

v.

Civil No. 05-cv-327-JM

Town of Bow

REPORT AND RECOMMENDATION

Judge Barbadoro requested a Report and Recommendation on all arguments raised by the parties with respect to the motion to intervene. I previously redesignated my December 22, 2005, order denying intervenor status as a report and recommendation. See New York Chinese Programs v. U.E. Enters., 996 F.2d 21, 25 (2d Cir. 1993) (suggesting redesignation of such orders as report and recommendations).

After the date on which that order was redesignated as a report and recommendation, the would-be intervenor notified the court of a newly decided case from the First Circuit - B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc., 440 F.3d 541, 546 (1st Cir. 2006). I believe that this case provides the additional legal authority to permit intervention which I had previously found lacking in my order of December 22, 2005. The First Circuit has clarified that intervenors "need only offer 'an adequate explanation as to why' (they) are not sufficiently

represented by the named party." Id.. Here, the Herringtons have offered such an explanation. I recommend that the motion to intervene (document no. 7) be granted.

Any objections to this report and recommendation must be filed within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the district court's order. See Unauthorized Practice of Law Committee v. Gordon, 979 F.2d 11, 13-14 (1st Cir. 1992); United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986).

/s/ James R. Muirhead
James R. Muirhead
United States Magistrate Judge

August 15, 2006

cc: Steven E. Grill, Esquire
Paul T. Fitzgerald, Esquire
Jeffrey C. Spear, Esquire